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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,734	01/17/2001	Paula Ann Johnson	J3509(C)	6621

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UNILEVER INTELLECTUAL PROPERTY GROUP
700 SYLVAN AVENUE,
BLDG C2 SOUTH
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

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02/07/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/764,734	Applicant(s) JOHNSON ET AL.	
	Examiner Alton N. Pryor	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-12 and 14-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-12 and 14-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/31/07</u> . | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Applicant's arguments filed 2/8/07 have been fully considered but they are not persuasive. See rejection below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,4,7,8,10-12,15,18,21, and 23 no longer remain rejected under 35 U.S.C. 103(a) as being unpatentable over Voss (US 3507796; 4/21/70) in view of Franks et al (US 4145532). New claim 29 is added to this rejection. Voss teaches an antimicrobial composition for applying to the outer surface of the human body comprising a carrier and a transition metal chelator (DTPA); wherein the transition metal comprises a transition chelator anion and an organic cation (quaternary ammonium compound). See column 1 line 52 – column 2 line 66, claim 1. Voss also suggests that the composition can comprise ethanol. See column 18 example IX. Applicant argues that Example IX is to a mouthwash rather than to an external application to the human body. Examiner argues that it is not required that a reference provide all possible scenarios for a composition. Therefore, the instant composition is made obvious by the references. One having ordinary skill in the art would have been motivated to include ethanol in a composition for applying to the outer surface of the human body to arrive at the instant composition since the prior art suggests the employment of ethanol as a

solvent. Voss also teaches that amine oxides can be added to the composition. See column 7 lines 29-46, claims. Frank teaches that amine oxides can function as solvents. See abstract, column 2 lines 22-25, claim 1. In addition to the inclusion of ethanol, it would have been obvious for Voss to include amine oxide in the composition. Voss would have been motivated to do this since he makes the suggestion.

Response to arguments in amendment filed 2/8/07

A. Applicant argues:

1. Amendment to claim 1 requiring that the claimed composition is in the form of a deodorant for use on the outer surface of the human body or on apparel worn in close proximity thereto, incorporates a state of matter requirement that eliminates any possibility of the dodecyl amine oxide of Voss being considered an organic solvent therein.
2. Voss' mouthwash composition, comprising excess of 70% water, is not a composition that would be considered a deodorant composition within the meaning of the instant claims.

B. Examiner's response:

1. Claim 1 is to a composition. Therefore a statement of intended use put into claim 1 such as the deodorant product being used on the outer surface of the human body or on apparel worn in close proximity thereto has no patentable significance. Note, in a claim to

a composition a statement of intended use has no patentable significance.

2. Voss's mouthwash is a deodorant composition regardless of how much water is present. Note, the statement of intended use recited in amended claim 1 has no patentable significance because in a claim to a composition a statement of intended use has no patentable weight. The meaning of the deodorant composition incorporated in claim 1 entails the intended use of the composition, which has no patentable significance.

Response to Arguments in amendment filed 4/19/06

A. Applicant argues:

1. Voss discloses detergents and, in addition, amine oxides which are solids at room temperature with dimethyldodecylamine oxide having the lowest m.p. of 132-133 degree C.
2. Voss and Franks et al are non-analogous references since they disclose a different function and means for accomplishing their respective functions. For this reason, the combination of references is improper.
3. Voss' compositions (e.g. mouthwash) use in excess of 70% water and therefore, would not be desirable as a deodorant; whereas, subject compositions are formulated in organic solvents as the major component. See claims 13,14 and new claim 28.

B. Examiner argues:

1. Dimethyldodecylamine meets the limitation of the claims which requires the amine N to bare at least one N-substituent having C1-C10 terminal hydrocarbyl group. The two methyl groups of dimethyldodecylamine meets this requirement. Note the claims employ "comprising" language which allows for the inclusion of other detergents taught by Voss. Note claims do not define a state of matter requirement for the amine component. Therefore, dimethyldodecylamine meets the limitation the amine requirement for the invention.
2. Franks et al is only used here to support that amine oxides have the capability of functioning as solvents and based on Franks et al teaching it can be deduced that dimethyldodecylamine functions as a solvent. There is no other reason for employing Franks et al in office action. Note, Voss alone meets the limitations of the claims.
3. Mouthwash deodorizes the mouth. Therefore, Voss' mouthwash comprising in excess of 70% water serves as a deodorant. In the claims presently rejected the water limitations of claims 13,14, and 28 are not required.

Response to Applicants' argument

Applicants have amended claim 1 to recite that the composition comprises less than 50% water and claim 29 to recite the specific cations of the chelator salts. For this reason the rejection is withdrawn.

New Rejections

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1,4-12,14-29 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6793914. Although the conflicting claims are not identical, they are not patentably distinct from each other because both USPN '914 and instant invention make claim to a composition comprising iron chelators such as DTPA (see column 5 lines 30-45 in USPN), organic

amines such as amine having at least one C1-C10 terminal hydrocarbyl group (see column 6 lines 62-67 in USPN), water present at 5 – 50% (see column 5 last paragraph in USPN), volatile propellants are excluded from the composition (see abstract in USPN).

Claims 1,4-12,14-29 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6503490. Although the conflicting claims are not identical, they are not patentably distinct from each other because both USPN '490 and instant invention make claim to a composition comprising transition metal chelators (salt having an organic cation) such as DTPA and cyclohexylamine, organic amines such as amine having at least one C1-C10 terminal hydrocarbyl group (see column 5 lines 5-29 in USPN), water present in less than 50% (see column 7 lines 41-47 in USPN), volatile propellants are excluded from the composition.

Claims 1,4-12,14-29 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,4,7,8,12-16,18-26 of copending Application No. 10/895,179. Although the conflicting claims are not identical, they are not patentably distinct from each other because both USPN '179 and instant invention make claim to a composition comprising iron chelators such as DTPA (see column 5 lines 30-45), organic amines such as amine having at least one C1-C10 terminal hydrocarbyl group (see column 6 lines 62-67), water present at 5 – 50% (see column 5 last paragraph), volatile propellants are excluded from the composition (see abstract).


This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alton Pryor
Primary Examiner
AU 1616